IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.102 OF 2005

Ashok S. Shinde. ..Petitioner.

V/s.

Ramchandra Bhaurao Kondubhairi. ..Respondent.

Mr.S.G.Deshmukh for petitioner.

Mr.D.A.Patil, AGP for Respondent Nos. 3 and 4.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 7, 2006.

P.C. :

1. Heard counsel for the parties. Perused the reply affidavit filed by the respondent No.4.

2. In this petition grievance is made about non-compliance of direction given by this court in its order dated 20th October, 2004 passed in W.P.No.2192 of 1990 in the following terms.

> "10. In the result, the petition is allowed. The impugned order is set aside. The Petitioner is directed to be reinstated forthwith. Since the petitioner has given up his claim for back wages at the stage of issuance of rule in the petition, he shall not be entitled for back wages. However, his services would be treated as continuous so as to claim the benefits other than monetary benefits."

3. It is not in dispute that the respondent Nos.

3 and 4, who are the officials of the departments were not parties to the said writ petition. State of Maharashtra or any of its department were not impleaded as respondents in the said writ petition. Writ Petition was contested between the petitioner employee and the management respondent therein. In those proceedings the above order has been passed. The management therefore, is primarily responsible to carry out the said order, which position is fairly accepted. The grievance however, is that the management forwarded proposal to the respondent Nos. 3 and 4 for releasing salary of the petitioner, who has been reinstated in terms of the order of this court. The respondent Nos. 3 and 4 in turn are of the opinion that the management is not entitled for grant of salary payable to the petitioner as the petitioner has been reinstated as extra teacher and not against regular post. According to the said respondents therefore, petitioner cannot be absorbed in some other aided school. This is the stand taken on affidavit filed by the respondent Nos.3 and 4. In paragraph-6 of the affidavit it is averred as follows:

> "6. I respectfully submit that the Education Officer, Solapur had sought a guidance regarding the Petitioners reinstatement by its letter dt. 27.5.2005

> and again by its letter dt.5.10.2005. While considering those two proposals, it was noticed that the Government or its representatives were not partly in the Petition, there was no vacant post in the Respondent School. The Petitioner was reinstated as a extra teacher. In such situation, it was not possible to approve the reinstatement and to treat the Petitioner as surplus teacher and in turn to absorb him in some other aided school. Hence, the Respondent No.4 i.e. Deputy Director of Education by its letter dt.17.11.2005 informed to the Education Officer that as Government was not party in the Petition as well as Petitioner was not permanent teacher, he cannot be absorbed and the salary cannot be paid by the Education Department. I further say that in such cases, it is the responsibility of the Management to pay the salary to such person."

4. I am in agreement with the stand taken by the respondent Nos.3 and 4 that since they were not party to the Writ Petition, the fact that the order of reinstatement is passed does not mean that the petitioner will have to be treated as regular employee. It is fairly accepted by the counsel for the petitioner that the fact whether the petitioner was appointed against regular post or not was not put in issue in the Writ Petition decided by this court. That issue will have to be and has been considered by the authorities. In the opinion of the authorities the petitioner is reinstated as extra teacher. In view of that opinion, the question of department taking the responsibility of payment of salary to the

petitioner does not arise. If the petitioner is aggrieved by the said opinion reached by the authorities, it will be open to the petitioner to challenge the same in the appropriate proceedings, as may be advised and as permissible by law, which proceeding will be decided on its own merits in accordance with the law.

5. Suffice it to observe that having regard to the nature of controversy it is not a case for initiating contempt action. Hence this petition is disposed of and notice issued to the respondent Nos. 3 and 4 stands discharged.

6. In view of this order, order of issuance of bailable warrants is recalled.